

Introduced by Senator Murray

January 14, 2005

An act to amend Section 17529.5 of the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

SB 97, as amended, Murray. Commercial electronic mail: penalties.

Existing law prohibits a person or entity from using commercial e-mail advertisements containing certain falsified, misrepresented, obscured, or misleading information. Existing law authorizes the Attorney General, an e-mail service provider, or the recipient of an unsolicited commercial e-mail advertisement transmitted in violation of these provisions to bring an action to recover actual damages and liquidated damages of \$1,000 per unsolicited commercial e-mail advertisement transmitted in violation of the provisions, up to \$1,000,000 per incident, subject to reduction by the court.

This bill would make a violation of these provisions ~~punishable as either a misdemeanor or as a felony~~ *punishable* by a fine of up to \$2,500, imprisonment of up to one year, or both that fine and imprisonment. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17529.5 of the Business and
2 Professions Code is amended to read:
3 17529.5. (a) It is unlawful for any person or entity to
4 advertise in a commercial e-mail advertisement either sent from
5 California or sent to a California electronic mail address under
6 any of the following circumstances:
7 (1) The e-mail advertisement contains or is accompanied by a
8 third-party's domain name without the permission of the third
9 party.
10 (2) The e-mail advertisement contains or is accompanied by
11 falsified, misrepresented, or forged header information. This
12 paragraph does not apply to truthful information used by a third
13 party who has been lawfully authorized by the advertiser to use
14 that information.
15 (3) The e-mail advertisement has a subject line that a person
16 knows would be likely to mislead a recipient, acting reasonably
17 under the circumstances, about a material fact regarding the
18 contents or subject matter of the message.
19 (b) (1) (A) In addition to any other remedies provided by any
20 other provision of law, the following may bring an action against
21 a person or entity that violates any provision of this section:
22 (i) The Attorney General.
23 (ii) An electronic mail service provider.
24 (iii) A recipient of an unsolicited commercial e-mail
25 advertisement, as defined in Section 17529.1.
26 (B) A person or entity bringing an action pursuant to
27 subparagraph (A) may recover either or both of the following:
28 (i) Actual damages.
29 (ii) Liquidated damages of one thousand dollars (\$1,000) for
30 each unsolicited commercial e-mail advertisement transmitted in
31 violation of this section, up to one million dollars (\$1,000,000)
32 per incident.
33 (C) The recipient, an electronic mail service provider, or the
34 Attorney General, if the prevailing plaintiff, may also recover
35 reasonable attorney's fees and costs.

1 (D) However, there shall not be a cause of action under this
2 section against an electronic mail service provider that is only
3 involved in the routine transmission of the e-mail advertisement
4 over its computer network.

5 (2) If the court finds that the defendant established and
6 implemented, with due care, practices and procedures reasonably
7 designed to effectively prevent unsolicited commercial e-mail
8 advertisements that are in violation of this section, the court shall
9 reduce the liquidated damages recoverable under paragraph (1) to
10 a maximum of one hundred dollars (\$100) for each unsolicited
11 commercial e-mail advertisement, or a maximum of one hundred
12 thousand dollars (\$100,000) per incident.

13 (3) (A) A person who has brought an action against a party
14 under this section shall not bring an action against that party
15 under Section 17529.8 or 17538.45 for the same commercial
16 e-mail advertisement, as defined in subdivision (c) of Section
17 17529.1.

18 (B) A person who has brought an action against a party under
19 Section 17529.8 or 17538.45 shall not bring an action against
20 that party under this section for the same commercial e-mail
21 advertisement, as defined in subdivision (c) of Section 17529.1.

22 (c) A violation of this section is ~~punishable either as a~~
23 ~~misdemeanor or as a felony~~, *punishable* by a fine of not more
24 than two thousand five hundred dollars (\$2,500), imprisonment
25 in a county jail for not more than one year, or both that fine and
26 imprisonment.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the
32 penalty for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition of a
34 crime within the meaning of Section 6 of Article XIII B of the
35 California Constitution.